

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-1030

DEREK MULLINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEES

Opinion Delivered MAY 6, 2009

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT,
[NO. CR-2007-156-1]

HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Derek Mullins appeals his conviction by a Grant County jury on a charge of second-degree battery for attacking a police officer in violation of Arkansas Code Annotated section 5-13-202(a)(4)(A)(i) (Supp. 2007). He was sentenced to seventy-two months' probation. His sole point on appeal is a challenge to the sufficiency of the evidence supporting his conviction, specifically that there was insufficient evidence to establish the element that he acted knowingly in causing physical injury. Appellant failed to preserve the issue for review; accordingly, we affirm.

On November 23, 2007, appellant attempted to hang himself in his cell while serving a nine-day jail sentence in the Grant County Jail for driving on a suspended license. One of the responding law enforcement officers, Sergeant Chris Delucci, arrived at the cell shortly after the attempt occurred. Sergeant Delucci alleged that appellant threatened officers and

demanded that Sergeant Delucci leave, then clenched his fists and wildly swung his fists at Sergeant Delucci. Sergeant Delucci's forehead, hands, and head (behind his right ear) allegedly were scratched by a zipper on his windbreaker when appellant pulled at the windbreaker trying to pull it over Sergeant Delucci's head.

On December 11, 2007, the State filed a felony information alleging that appellant committed the offense of second-degree battery. He stood trial before a jury on February 7, 2008. The State presented testimony regarding the altercation by detention officers Erica Jordan, Randy Heath, Ken Wicker, and Chris Delucci. At the close of the State's case, appellant's counsel made the following motion:

Your Honor, the State has rested. All the evidence that we're going to hear from the State is in, and it is insufficient to sustain a conviction on the charge with which he is charged. It does not provide sufficient proof of each of the elements of the charge. And we, therefore, move for directed verdict.

That motion was denied by the circuit court.

Appellant then testified on his own behalf, explaining that he attempted to hang himself because he had not received his anxiety/depression medicine as directed by his doctor while incarcerated. He testified that he was not fully conscious and did not remember the altercation. Appellant's mother, Brenda Cheatham, also testified for the defense, explaining that he had been on anxiety medication for two years and suffers severe mood swings if he does not take it. Appellant's counsel renewed the motion at the close of all the evidence, stating:

Your Honor, both the State and defense have rested now. All the evidence is in. And there is insufficient evidence to convict my client, Derek Mullins, of the offense of which he's charged or any other offense. We renew our motion for directed verdict.

The renewed motion was also denied. The jury found appellant guilty of second-degree battery and imposed the previously set-forth sentence. The judgment and commitment order was filed on February 13, 2008, and appellant filed a timely notice of appeal on March 7, 2008. This appeal followed.

We first consider whether this issue is preserved for appeal. Arkansas Rule of Criminal Procedure 33.1(a) provides that in a jury trial a motion for a directed verdict must be made at the close of the evidence offered by the prosecution and again at the close of all evidence. The rule further provides that the failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict. Ark. R. Crim. P. 33.1(c). Appellant moved for a directed verdict at the close of the State's case-in chief, and that motion was denied. He renewed the motion at the close of all the evidence, standing on the original basis therefor, and it was also denied. Therefore, as related solely to the timing requirements of Rule 33.1, his challenge to the sufficiency of the evidence is preserved for our review.

However, our review does not end there. We are unable to reach the merits of appellant's sufficiency argument because he failed to preserve it for appeal. Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides, "a motion for directed verdict shall state the specific grounds therefor." Ark. R. Crim. P. 33.1(a). Subsection (c) of this rule provides, in pertinent part:

A motion for directed verdict ... based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the

evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

Ark. R. Crim. P. 33.1(c). Rule 33.1 is strictly construed. *Grady v. State*, 350 Ark. 160, 85 S.W.3d 531 (2002). The reason underlying the requirement that specific grounds be stated and that the absent proof be pinpointed is that it allows the circuit court the option of either granting the motion or, if justice requires, allowing the State to reopen its case and supply the missing proof. *Id.* Finally, a general motion that merely asserts that the State has failed to prove its case is inadequate to preserve the issue for appeal. *Id.*

Neither appellant's initial motion nor the renewal includes any argument relating to the only charge/conviction from which appellant is appealing—the second-degree battery charge. Because these motions fail to reference and identify the insufficient evidence presented on the charge from which he now appeals, appellant has not preserved this argument for appeal. *See* Ark. R. Crim. P. 33.1(a).

The general nature of the motions fails to comply with the specificity requirements of Rule 33.1(c) of the Arkansas Rules of Criminal Procedure. *See Grady, supra; Davis v. State*, 97 Ark. App. 6, 242 S.W.3d 630 (2006) (holding that a general motion for directed verdict that merely asserted that the State failed to prove its case and did not inform the trial court of any specific deficiencies in the State's proof was inadequate to preserve the issue for appeal). A directed verdict must specifically identify the elements of the crime that the State failed to prove. *See Brown v. State*, 368 Ark. 344, 246 S.W.3d 414 (2007). Although appellant now argues that he was (1) not fully conscious during the altercation, (2) not aware that his

conduct would cause injury, and (3) negligent in his actions rather than purposeful, he made none of those arguments in his motions for directed verdict at trial. Accordingly, we affirm.

Affirmed.

HART and KINARD, JJ., agree.